

**Western  
Pacific  
Regional  
Fishery  
Management  
Council**

June 1, 2004

Chief, Marine Mammal Conservation Division  
Attn: Zero Mortality Rate Goal  
Office of Protected Resources  
National Marine Fisheries Service (F/PR2)  
1315 East West Highway  
Silver Spring, MD 20910  
Email: [0648-AR15@noaa.gov](mailto:0648-AR15@noaa.gov)

**Re: Comments on the Zero Mortality Rate Goal proposed rule**

To Whom It May Concern:

The Western Pacific Fishery Management Council offers the following comments on the Zero Mortality Rate Goal (ZMRG) proposed rule, published in the Federal Register on April 29, 2004. The new rule will potentially have the most impact on the Hawaii-based longline (HLL) fishery. This fishery is already the focus of concerns over its interactions with False Killer Whales (FKWs) and the putative identification of FKWs taken inside the Hawaii EEZ as a 'strategic stock' under the Marine Mammal Protection Act.

Based on NMFS observer data, the fishery interacts with about 10 or so species of whales and dolphins annually, with about 50 of these interactions categorized as causing serious injury or death. The fishery makes about 12,250 sets per year on average, or yielding an annual interaction rate with whales and dolphins of 0.004 per set. This is an extremely low interaction rate and indicative of the minimal impact this fishery has on cetacean populations in the Western Pacific. However, the proposed rule suggests that the ZMRG should be based on 10% of the estimated Potential Biological Removal (PBR) for a stock. The Council has three principle concerns about this panoptic approach to defining the ZMRG, namely defining strategic stocks, the robustness of PBR estimates, and reduction of interactions to 10% of PBR, when the interaction rates are already extremely low.

**Defining strategic stocks**

In the case of FKWs, NMFS has defined the FKWs taken in the Hawaii EEZ as a strategic stock, based on genetic evidence which suggests that FKWs between the Central North Pacific (Hawaii) and those in the Eastern Tropical Pacific (Clipperton, Galapagos Islands) are separate, reproductively isolated populations. However, the degree of separation of Hawaii EEZ FKWs from the other FKWs in the Central and Western Pacific is not known, and the geographic boundaries for the populations cannot yet be identified.

FKWs have been taken by the longline fishery in an area ranging from the north of Hawaii EEZ to the equator. Are all these FKWs from the same population or from separate isolated populations? If from the same population, then the designation of a strategic stock in the Hawaii EEZ would be questionable.

#### **Robustness of the PBR estimates**

In a May 12, 2004 letter to NMFS dated May 12, 2004, (commenting on the 2004 List of Fisheries), we noted the problems associated with abundance estimates generated from the NMFS' 2002 cetacean survey cruise, and that these were fundamentally flawed, and biased downwards. We also noted confirmed sightings of pods of FKWs, each of which were about half the size of the total FKW estimate for the Hawaii EEZ. We further noted that these animals are not homogeneously distributed in time and space, but rather have a strong seasonal abundance around Hawaii tied to seasonal trends in abundance of prey species such as yellowfin tuna. Surveys which fail to account for these factors underestimate the abundance of these whales. The generation of this and other population estimates and PBRs therefore must be viewed with suspicion and their utility questioned in relation to implementing the ZMRG.

The Council also has concerns about the current protocols for determining the assumed post-release mortality of FKWs and other marine mammals. In essence, nearly all hookings and entanglements counted as mortalities, even though we know next to nothing about the post-release survival of marine mammals that are entangled or hooked by longliners. Moreover, the categorization of serious injury includes any external hooking near the head or eyes and any animal released with trailing gear regardless of whether hooked externally or not. It may be reasonable to deliberately bias the putative mortality of an animal classed as endangered or threatened, but not for a common and abundant species such as the FKW.

#### **Reduction of interactions to 10% of PBR**

On average the HLL fishery causes about 9 FKW mortalities and serious injuries per year. The current estimate of PBR for FKWs in the Hawaii EEZ, based on the strategic stock assumption would be 0.8 mortalities and serious injuries per year per year. The implications of the ZMRG for the Hawaii fishery will be that it will have to achieve at least an order of magnitude reduction in FKW interactions to be consistent with the ZMRG. The prospect of this being accomplished in way that is statistically verifiable is at best minimal. Experience has shown with other protected species interaction rates such as turtles that it is impossible to determine any confidence intervals around such low point estimates. Indeed it might be argued that such fluctuations occur naturally from year to year, given that annual estimates of mortality and serious injury of FKWs in the HLL fishery have ranged from 0 to 22 per year between 1994 and 2002<sup>1</sup>.

What guidance does NMFS intend to provide for circumstances such as these? Clearly, in the case of endangered whales such as the Atlantic Northern Right Whale, with only a few hundred individuals left in the population, there can be no question about requiring fisheries to literally zero-out

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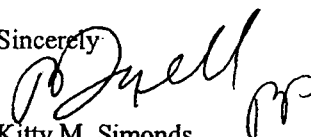
<sup>1</sup> Forney, Karin. 2003. Estimates of Cetacean Mortality and Injury in the Hawaii-based Longline Fishery, 1994-2002. Southwest Fisheries Science Center, NMFS, La Jolla, Ca.

interactions. However, FKWs are not endangered, they are a circum-global species found in all the world's oceans at tropical and subtropical latitudes. According to the evidence to-date there may be genetic isolation between eastern stocks and those in Hawaii, but the isolation of the FKWs in the EEZ around Hawaii from those in the immediate adjacent waters is still an open question. NMFS needs to address how vulnerable the Hawaii fishery will be to closure or other constraints if it cannot achieve the ZMRG. While the proposed rule states that "the legislative history of the MMPA makes repeated references to Congressional intent to avoid shutting down fisheries or putting an overwhelming economic burden on fisheries to achieve the goal," it is unlikely that when the MMPA was being framed, the drafters considered the possibility that it would be used to seek closures of fisheries such as pelagic longlining. To implement the ZMRG based on incomplete scientific information or overly cautious parameters will only provide yet another avenue to pursue unjustifiable restrictions of Hawaii's commercial fisheries.

In summary, the Council is not opposed to the ZMRG in principle and recognizes the onus on NMFS to implement this, given the language of the MMPA. However, the proposed manner by which ZMRG will be implemented and the framework by which ZMRG evaluations will be conducted cannot simply be based on a simple index such as 10% PBR target, particularly in the circumstances experienced by the HLL fishery, where interaction rates with all marine mammals are extremely rare occurrences. NMFS should avoid a formulaic approach to establishing ZMRG, and should reserve discretion to avoid imposing requirements to develop take reduction plans when available scientific information do not support this process.

Thank you for the opportunity to comment on the proposed rule for the ZMRG. Please feel free to contact Paul Dalzell of my staff at (808) 522-6042 if you have any questions about these comments.

Sincerely



Kitty M. Simonds  
Executive Director

Cc: William Hogarth, Asst. Administrator NOAA-Fisheries  
Samuel Pooley, PIRO Acting Regional Administrator  
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